

Appl. No. : 10/656,721  
Filed : September 5, 2003

### REMARKS

Restriction to one of the following groups was required under 35 USC 121:

- Group I      Claims 1-20, drawn to a subgenomic replicon of dengue virus, a vaccine and a therapeutic comprising it, classified in class 435, subclass 235.1;
- Group II      Claims 21-24, drawn to a method of immunization comprising administering a replicon particle or virus like particle, classified in class 424, subclass 184.

In response to this restriction requirement, Applicant provisionally elects Group I, that is Claims 1-20 with traverse. The Restriction Requirement is submitted to be improper because, according to MPEP 803, there are two criteria for a proper Restriction Requirement: (A) The inventions must be independent or distinct as claimed, and (B) There would be a serious burden on the examiner if restriction is not required. Here, the members of the group are sufficiently few in number that a search and examination of the group can be made without creating a serious burden on the examiner, thus restriction is improper and the requirement should be withdrawn.

#### *Election of Species*

Additionally, an election of species was required under 35 USC 121:

1. one deletion in the coding sequence for either C, PreM or E;
2. one of the dengue types (1-4);

In response to the election of species requirement, with regard to C, PreM or E, Applicant elects species  $\Delta$ ME, that is Claims 2, 5, 8, 11, 14, and 16-20, and with regard to dengue types (1-4), Applicant elects species dengue type 2, that is Claims 1-3, 7-9, and 16-20, with the understanding that upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. Currently, with regard to C, PreM or E, Claims 16-20 are generic, and with regard to dengue types (1-4), Claims 1-3 and 16-20 are generic.

#### *Rejoinder*

The Examiner has required restriction between product and process claims. Applicant understands, that upon allowance of a product claim, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in

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accordance with the provisions of MPEP §821.04 and fully examined for patentability in accordance with 37 CFR 1.104.

### CONCLUSION

In view of the foregoing, Applicant respectfully requests that this application be passed to issuance. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 7/13/06

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